

Memorandum 2019-15

2019 Legislative Program (Status Report)

This memorandum provides a status report on Commission-related legislation in 2019.¹

Assembly Bill 473 (Maienschein). Disposition of Estate Without Administration

Assembly Member Maienschein has introduced Assembly Bill 473 to implement the following recommendations:

- *Disposition of Estate Without Administration: Dollar Amounts* (Aug. 2018)
- *Disposition of Estate Without Administration: Interest Rate* (Aug. 2018)

If there are any noteworthy developments regarding that bill before the April meeting, the staff will provide an oral update at the meeting.

Language Implementing New Study Assignment

As noted at the February meeting, the Governor's budget would assign a new study to the Commission, involving review of the Penal Code.

The Department of Finance has now publicly released the associated budget trailer bill language, which would effect statutory changes related to the new study.² A copy of the proposed language is attached.

Key features of the implementing language are noted below.

- Commencing January 1, 2020, there would be a new body within the California Law Revision Commission, the Committee on the Revision of the Penal Code (the "Committee").³

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See <http://dof.ca.gov/Budget/Trailer_Bill_Language/documents/ PenalCodeReviewCommittee.pdf>.

3. See proposed revision of Gov't Code § 8280.

- The Committee would consist of one Senator, one Assembly Member, and five persons appointed by the Governor.⁴
- The members of the Committee may not also be members of the Commission.⁵
- The new Committee would be charged with the new study responsibilities:

(a) The committee shall study and make recommendations on revision of the Penal Code to achieve all of the following objectives:

- (1) Simplify and rationalize the substance of criminal law.
- (2) Simplify and rationalize criminal procedures.
- (3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders.
- (4) Improve the system of parole and probation.

(b) In making recommendations pursuant to subdivision (a), the committee may recommend adjustments to the length of sentence terms. In making that recommendation, the committee may consider any factors, including but not limited to any of the following:

- (1) The protection of the public.
- (2) The severity of the offense.
- (3) The rate of recidivism.
- (4) The availability and success of alternatives to incarceration.
- (5) Empirically significant disparities between individuals convicted of an offense and individuals convicted of other similar offenses.⁶

- The Committee would make its own recommendations, which would not need to be approved by the Commission.⁷

The proposed legislation would also include amendments to codify existing Commission practices⁸ and to update a rule that has been superseded by other law.⁹

Respectfully submitted,

Brian Hebert
Executive Director

4. See proposed Gov't Code § 8281.5.

5. See proposed Gov't Code § 8281.5(d).

6. See proposed Gov't Code § 8290.5(a)-(b).

7. See proposed Gov't Code § 8290.5(c).

8. See proposed Gov't Code §§ 8283(a) (quorum), 8284 (executive director's title), 8288(b) (committee testimony), 8291(b) (submission of recommendations to committees).

9. See proposed amendment to Gov't Code § 8282 (per diem amount).

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An act to amend Sections 8280, 8281, 8282, 8283, 8284, 8286, 8287, 8288, 8291, 8292, 8293, 8294, 8295, and 8296 of, and to add Sections 8281.5 and 8290.5 to, the Government Code, relating to state government.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8280 of the Government Code is amended to read:

8280. (a) There is created in the State Government the California Law Revision Commission.

(b) Commencing January 1, 2020, there exists within the California Law Revision Commission the Committee on Revision of the Penal Code.

(c) For purposes of this article, the following terms have the following meanings:

(1) "Commission" means the California Law Revision Commission.

(2) "Committee" means the Committee on Revision of the Penal Code, unless otherwise specified.

SEC. 2. Section 8281 of the Government Code is amended to read:

8281. (a) The commission consists of one Member of the Senate appointed by the Senate Committee on Rules, one Member of the Assembly appointed by the Speaker, Speaker of the Assembly, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel ~~shall be~~ is an ex officio member of the commission.

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(b) The Members of the Legislature appointed to the commission ~~shall~~ serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective ~~positions~~ public offices as Members of the Legislature. For the purposes of this article, those Members of the Legislature ~~shall~~ constitute a joint interim investigating committee on the subject of this article ~~and~~ and, as a joint interim investigating ~~committee shall~~ committee, have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

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(c) ~~The~~ members appointed by the Governor shall be appointed for a term of four years ~~and shall hold office until the appointment and qualification of their successors.~~ years. The terms of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, ~~he or she~~ the Governor shall appoint a person to the office, who shall hold office for the balance of the unexpired term of ~~his or her~~ the person's predecessor.

SEC. 3. Section 8281.5 is added to the Government Code, to read:

8281.5. (a) The Committee on Revision of the Penal Code consists of one Member of the Senate appointed by the Senate Committee on Rules, one Member of the Assembly appointed by the Speaker of the Assembly, and five members appointed by the Governor.

(b) (1) The Members of the Legislature appointed to the committee serve at the pleasure of the appointing power and shall participate in the activities of the committee to the extent that the participation is not incompatible with their respective public offices as Members of the Legislature.

(2) For purposes of this article, those Members of the Legislature constitute a joint interim investigating committee on the subject of Section 8290.5 and, as a joint interim investigating committee, have the powers and duties imposed on those committees by the Joint Rules of the Senate and Assembly.



(c) (1) The members appointed by the Governor shall be appointed for a term of four years. The terms of the members first appointed expire as follows:

(A) Three terms expire on January 1, 2022.

(B) Two terms expire on January 1, 2024.

(2) When a vacancy occurs in any office within the committee filled by appointment by the Governor, the Governor shall appoint a person to the office, who shall hold office for the balance of the unexpired term of the person's predecessor.

(d) Members of the committee shall not be members of the commission.

SEC. 4. Section 8282 of the Government Code is amended to read:

8282. (a) The members of the commission and committee shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) one hundred dollars (\$100) for each day's attendance at a meeting of the commission, commission or committee.

(b) ~~In addition, each member~~ Each member of the commission and committee shall be allowed actual expenses incurred in the discharge of ~~his or her~~ the member's duties, including travel expenses.

SEC. 5. Section 8283 of the Government Code is amended to read:

8283. (a) The commission shall select one of its members chairperson. Five members constitute a quorum of the commission.

(b) The Governor shall select one of the committee members to serve as chairperson. Three members constitute a quorum of the committee.

SEC. 6. Section 8284 of the Government Code is amended to read:

8284. The commission may appoint an executive ~~secretary~~ director and fix ~~his or her~~ the director's compensation, in accordance with law.

SEC. 7. Section 8286 of the Government Code is amended to read:

8286. The material of the State Library shall be made available to the ~~commission, commission and the committee~~. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission and committee full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

SEC. 8. Section 8287 of the Government Code is amended to read:

8287. The Board of ~~Governors~~ Trustees of the State Bar shall assist the commission and the committee in any manner the commission or committee may request within the scope of its powers or duties.

SEC. 9. Section 8288 of the Government Code is amended to read:

8288. (a) No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an Governor. An employee or member of the commission appointed by the Governor shall not advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, ~~in his or her~~ that person's official capacity as an employee or member.

(b) An employee or member of the commission may appear and testify at any legislative committee hearing on legislation to implement a commission



recommendation, for the purpose of explaining the recommendation and answering questions posed by the legislative committee members, if the employee or member of the commission does not violate the restrictions described in subdivision (a).

SEC. 10. Section 8290.5 is added to the Government Code, to read:

8290.5. (a) The committee shall study and make recommendations on revision of the Penal Code to achieve all of the following objectives:

- (1) Simplify and rationalize the substance of criminal law.
- (2) Simplify and rationalize criminal procedures.
- (3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders.

- (4) Improve the system of parole and probation.

(b) In making recommendations pursuant to subdivision (a), the committee may recommend adjustments to the length of sentence terms. In making that recommendation, the committee may consider any factors, including, but not limited to, any of the following:

- (1) The protection of the public.
- (2) The severity of the offense.
- (3) The rate of recidivism.
- (4) The availability and success of alternatives to incarceration.
- (5) Empirically significant disparities between individuals convicted of an offense and individuals convicted of other similar offenses.

(c) The approval by the commission of any recommendations by the committee is not required.

SEC. 11. Section 8291 of the Government Code is amended to read:

8291. (a) The commission and the committee shall submit their reports, and its their recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments. Legislature.

(b) Notwithstanding Section 9795, the commission and the committee may provide a copy of a recommendation to each member of a legislative committee that is hearing legislation that would implement the recommendation.

SEC. 12. Section 8292 of the Government Code is amended to read:

8292. The commission and the committee may, within the limitations imposed by Section 8293, include in its report their reports the legislative measures proposed by it them to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission or the committee with a full and accurate index thereto.

SEC. 13. Section 8293 of the Government Code is amended to read:

8293. (a) The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.



(b) The committee shall prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year.

SEC. 14. Section 8294 of the Government Code is amended to read:

8294. The commission's and committee's reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of ~~the commission.~~ commission or committee, respectively. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the ~~commission.~~ commission or committee.

SEC. 15. Section 8295 of the Government Code is amended to read:

8295. The commission and the committee shall confer and cooperate with any legislative committee on revision of the law and may contract with any other committee for the rendition of service, by either for the other, in the work of revision.

SEC. 16. Section 8296 of the Government Code is amended to read:

8296. The commission and the committee may cooperate with any bar association or other learned, professional, or scientific association, ~~institution~~ institution, or foundation in any manner suitable for the fulfillment of the purposes of this article.



LEGISLATIVE COUNSEL'S DIGEST

Bill No. _____
as introduced, _____
General Subject: California Law Revision Commission: Penal Code.

(1) Existing law establishes the California Law Revision Commission to, among other things, examine the law for defects or anachronisms in the law, or for antiquated or inequitable rules of law, and to recommend necessary reforms. Existing law requires the commission to study any topic that the Legislature, by concurrent resolution or statute, refers to the commission.

This bill would, commencing January 1, 2020, establish within the commission the Committee on Revision of the Penal Code, consisting of 7 members, who would be appointed by the Legislature and the Governor, as specified. The bill would require the committee to study and make recommendations on revision of the Penal Code to achieve certain objectives, including, among others, simplifying and rationalizing the substance of criminal law and establishing alternatives to incarceration, as specified.

The bill would apply various provisions concerning the commission to the committee, including those relating to access to research materials, cooperation with other entities, and reporting requirements.

(2) Existing law prohibits a commission employee or member appointed by the Governor from advocating the passage or defeat of legislation concerning matters assigned to the commission or from appearing before any committee of the Legislature as to those matters unless requested to do so by the committee or its chairperson.

This bill would instead authorize a commission employee or member to appear and testify at any legislative committee hearing on legislation to implement a commission recommendation for the purpose of explaining the recommendation, if the employee or member does not advocate the passage or defeat of the legislation.

The bill would also make changes to other provisions concerning the commission, including those relating to quorum requirements, compensation of members, and the appointment of an executive director.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

